

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today
(1) was not written for publication in a law journal and
(2) is not binding precedent of the Board.

Paper No. 16

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JEFFREY P. BUSCHMANN and DAVID L. SHELTON

Appeal No. 96-2298
Application 08/147,179¹

ON BRIEF

Before CALVERT, COHEN and STAAB, Administrative Patent Judges.
COHEN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1
through 13, all of the claims in the application.

Appellants' invention pertains to an incandescent lamp
with shock resisting supports. An understanding of the

¹Application for patent filed November 03, 1993.

Appeal No. 96-2298
Application 08/147,179

invention can

be derived from a reading of exemplary claim 1, a copy of which appears in the appendix to the brief.

The following rejection is the sole rejection before us for review.

Claims 1 through 13 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite.

The full text of the examiner's rejection and response to the argument presented by appellants appears in the answer (Paper No. 15), while the complete statement of appellants' argument can be found in the brief (Paper No. 14).

OPINION

In reaching our conclusion on the indefiniteness issue raised in this appeal, this panel of the board has carefully considered appellants' specification, drawing, and claims,²

² In claim 7, line 1, "where in" should obviously be --wherein--.

Appeal No. 96-2298
Application 08/147,179

and the respective viewpoints of appellants and the examiner.³

As a

consequence of our review, we make the determination which follows.

We reverse the examiner's rejection of appellants' claims under the second paragraph of 35 U.S.C. 112.

In assessing the indefiniteness issue raised in this appeal, we keep in mind the following principles. Relative to the requirements of 35 U.S.C. § 112, second paragraph, the court in In re Hammack, 427 F.2d 1378, 1382, 166 USPQ 204, 208 (CCPA 1970) stated that

[i]ts purpose is to provide those who would endeavor, in future enterprise, to approach the area circumscribed by the claims of a patent, with the adequate notice demanded by due process of law, so that they may more readily and accurately determine the boundaries of protection involved and evaluate the possibility of infringement

³ In the brief (pages 6 through 8), appellants discuss an amendment after final rejection. This amendment was denied entry (Paper No. 9). Review of the appropriateness of the denial of entry of an amendment is by way of petition, not appeal. Thus, the content of the amendment is not before us, and we will not address the substance of the aforementioned discussion by appellants in the brief.

Appeal No. 96-2298
Application 08/147,179

and dominance.

Additionally, claims are considered to be definite, as required by the second paragraph of 35 U.S.C. § 112, when they define the metes and bounds of a claimed invention with a reasonable degree of precision and particularity. See In re Venezia, 530 F.2d 956, 958 189 USPQ 149, 151 (CCPA 1976). It must also be kept in mind

that claim language is read in light of the specification as it would be interpreted by one of ordinary skill in the art. See In re Sneed, 710 F.2d 1544, 1548, 218 USPQ 385, 388 (Fed. Cir. 1983).

We turn now to the matters of concern to the examiner as raised in the rejection (answer, page 3).

It is evident that the examiner views the location of the spacer and seal as indefinite. The examiner inquires as to how the seal and spacer are located relative to each other. Further, the examiner questions whether the seal is the same

Appeal No. 96-2298
Application 08/147,179

element as the spacer and/or sleeve. The examiner also makes reference to the language of claims 3 and 13 as regards the relative location of the separator.

Having read claims 1, 3 and 13, in particular, in light of the underlying disclosure, it is quite apparent to this panel of the board that the language criticized by the examiner in the claims is broad, not indefinite. Just because a claim is broad does not mean that it is indefinite. See In re Miller, 441 F.2d

689, 693, 169 USPQ 597, 600 (CCPA 1971) and Ex parte Scherberich, 201 USPQ 397, 398 (Bd. App. 1977).

The specification (pages 4 through 11) clearly reveals that the seal at the distal end of the first leg 22 is not the same element as the separately defined spacer 38 and/or sleeve. The language of the claims must, therefore, be understood as reciting these distinct entities. As to the questioned location of the spacer and seal recited in claims 1 and 13, we find that

Appeal No. 96-2298
Application 08/147,179

these components are definitely positioned as expressly set forth in these claims. The circumstance that their relative positioning with respect to one another, as described and depicted in the underlying disclosure, is not set forth in the claims is simply a matter of claim breadth, not indefiniteness. The claim broadly, but fairly, sets forth where the spacer and seal are positioned. It is also clearly evident to us that the positioning of the sleeve and separator is definitely set forth in claims 3 and 13. Once again, it is our opinion that the examiner's concern addresses claim breadth, not indefiniteness. For the reasons set forth, supra, we conclude that the claim language of concern to the

examiner is definite in meaning and, thus, in conformance with the requirements of 35 U.S.C. 112, second paragraph.

The decision of the examiner is reversed.

REVERSED

Appeal No. 96-2298
Application 08/147,179

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Administrative Patent Judge)	
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IRWIN CHARLES COHEN))
Administrative Patent Judge)	APPEALS AND
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Appeal No. 96-2298
Application 08/147,179

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